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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,277	03/01/2002	Steven Allen Toelke	128951	5185

7590 12/30/2003

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EXAMINER

VAN PELT, BRADLEY J

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application No.	Applicant(s)
	10/087,277	TOELKE ET AL.
	Examiner	Art Unit
	Bradley J Van Pelt	3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 October 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 and 22-37 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5 and 22-37 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Claim Objections

1. Claim 33 is objected to because of the following informalities: line 5, "space" should be changed to --spaced--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, and 22-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitrin (USPN 4,875,385) in view of Willemsen et al. (USPN 6,151,986).

Sitrian disclose an adjustable control pedal comprising in combination: a pivotable upper arm (36) having first and second guide slots (36g and 36f) and a drive slot (36e) formed therein; wherein the upper arm pivots about a pivot axis (52); and wherein the first and second guide slots are each straight; a lower arm (38) having a lower end carrying a pedal (44) and operatively connected to the upper arm for selected movement relative to the upper arm; a first pin (38f) secured to the lower arm and laterally extending into the first guide slot; a second pin (38i) secured to the lower arm and laterally extending into the second guide slot; and a drive assembly operatively connected to the lower arm to selectively move the lower arm relative to the upper arm and including: a screw (46) carried by the upper arm; a nut (52a) secured to the lower arm, laterally extending through the drive slot from the lower arm to the screw, threadably engaging

the screw, and adapted to axially move along the screw upon rotation of the screw; and a motor operatively connected to the screw to selectively rotate the screw;

the first and second guide slots are formed on opposite sides of the drive slot;

first and second slots are inclined;

weight of the lower arm is supported by the upper arm through the first and second pins;

the upper arm pivots about a pivot axis which is at a fixed position relative to the upper arm (note: fixed means securely placed or fastened, as broadly claimed Sitrin anticipates this limitation, because the pivot is securely fastened at a position relative to the upper arm);

a third pin (52b) secured to the upper arm for connection to a device to be controlled by operation of the adjustable control pedal;

wherein the drive slot is inclined (note: curved drive slot is inclined at indefinite points).

Sitrin does not disclose the pivot is spaced apart from the drive slot, the first and second guide slots are nonparallel; wherein the first and second guide slots extend entirely through the upper arm and the first and second pins extend entirely through the first and second guide slots respectively.

Willemesen et al. shows disclose a pivot (66) is spaced apart from the drive slot, a first and second guide (68, 30) slots are nonparallel; wherein the first and second guide slots extend entirely through an upper arm (12') and the first and second pins extend entirely through the first and second guide slots respectively.

To modify the apparatus of Sitrin so as to locate the pivot at a location apart from the drive slot would have been obvious to one of ordinary skill in the art at the time the invention

was made in view of the teachings of Willemsen et al. that such an arrangement simplifies the design by eliminating the need for a pivot nut.

To modify the apparatus of Sitrin so as make the first and second slots non-parallel would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Willemsen et al. that such an arrangement achieves the desired range of adjustability.

To modify the apparatus of Sitrin so as to place through hole slots in the upper arm and extend the pins entirely through the through hole slots would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Willemsen et al. that such an arrangement increases the durability of the adjustable pedal.

Response to Arguments

4. Applicant's arguments with respect to claims 1-5, and 22-37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

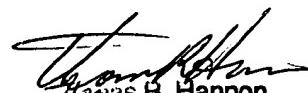
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J Van Pelt whose telephone number is 703.305.8176. The examiner can normally be reached on M-Th 7:00-4:30, 2nd F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9326.

Art Unit: 3682

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.2168.

BJVP



Thomas R. Hannon
Primary Examiner